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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B5

DATE: JUL 16 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a transportation engineer. At the time he filed the petition, the petitioner was a research scientist at [redacted]
The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by

increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the USCIS regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 26, 2011. In an introductory statement, counsel stated:

> Throughout his research career, [the petitioner] has gained acclaim as a researcher in the field of transportation engineering, especially in the area of transportation systems modeling and simulations.

> . . . In his position as a Research Scientist [the petitioner] continues to improve our national security, by developing systems to track barges traveling on inland waterways. He is also developing a new algorithm to identify errors in Intelligent Transportation Systems (ITS) sensors. . . .
>
> [The petitioner] is a highly acclaimed scientist whose work has had significant impact on the field of transportation engineering. . . .
>
> [The petitioner] has gained international acclaim, through his research and publications. . . .
>
> Because of [the petitioner's] specialized knowledge and educational background, requiring Oak Ridge National Laboratory to conduct a labor certification would cause an undue hardship upon the institution. It would be very unfortunate if ORNL had to divert its scientific focus by going through the labor certification process to seek someone with minimal qualifications for the research as opposed to someone who is considered to be one of the most talented individuals in his field in the world. . . .
>
> ORNL always searches for the best and brightest minds in the world. [The petitioner's] presence and important work at this national laboratory proves that he is a premier researcher in his field. [The petitioner] possesses qualities that would not be provided through the labor certification process.

Counsel mentioned the petitioner's published work, and the petitioner's *curriculum vitae* lists three published articles and a fourth "under review." The petitioner did not, however, submit copies of the articles or evidence of their impact. Rather, most of the petitioner's initial exhibits are witness letters, and most of the witnesses have demonstrable ties to the petitioner. The AAO will not quote from every letter, because some of them contain redundant claims already addressed in other letters. Instead, the AAO will discuss selected examples to illustrate the nature of the witnesses' claims. [redacted] who was "involved in reviewing [the petitioner's] master's thesis" at Texas Tech University, stated:

> As his Master's thesis, [the petitioner] selected an interesting problem related to improving the accuracy in tracking wildlife. . . . [T]he common and inexpensive method involves tagging the animal with a signal transmitter and estimating its location from this signal using multiple (more than two) receivers, which is known as radio-telemetry triangulation. Although this method is simple and economical . . . , the origin of the signal is extremely difficult to locate with high accuracy. . . . During his master's research [the petitioner] used a simple Brownian motion model, and expanded it by incorporating the non-linear dynamics. . . . His method showed a significant improvement from the existing system.

[redacted] on the petitioner's doctoral committee at the [redacted] described the petitioner's doctoral work:

> [The petitioner] developed a fusion architecture that used three different sensor measurements and integrate [*sic*] them to estimate the position and attitude (orientation) of a vehicle. The three sensor systems . . . were a Global Position System (GPS), Inertial Measurement Unit (IMU), and a camera. The objective of the project was to develop an alternative methodology to estimate the vehicles [*sic*] position when the GPS system is either giving an erroneous measurement or not recording any measurement at all. To accomplish this task he used the images obtained from the camera unit to estimate the translation and the rotation of the camera . . . between two consecutive image capturing locations. These translations and rotations were then fused with other sensors using a statistical optimized filter to get the vehicle's position and orientation.

Several of the witness letters focused on describing and discussing the petitioner's doctoral project that combined camera images with sensor data to track a moving vehicle. The witnesses indicated that the petitioner's successful completion of this project required rare talent. Among the witnesses to make such statements is [redacted] associate professor at [redacted] who claimed knowledge of the petitioner's work "through his research publications in leading transportation journals." [redacted] stated:

> [T]he design process involves highly skilled knowledge [in] multiple domains that can be broadly categorized as mechanical, mathematical, and computational techniques. . . . [F]using data with different characteristics, i.e., with different data rates and different error profiles, obtained from multiple sensory systems takes prominence. Possessing these prominent factors sets apart the experts who can contribute in autonomous vehicle research from the other engineers. As for my knowledge, there [are] only [a] few researchers in the world that can undertake such a difficult problem, and [the petitioner] is one of them.

Referring to the petitioner's doctoral project, involving the use of three different sensors correlated to images from a calibrated camera, [redacted] stated: "This algorithm is very effective and much needed in the autonomous vehicle domain, thus our group have [*sic*] referred [the petitioner's] work multiple times."

[redacted] a research scientist at the [redacted] stated: "I got to know [the petitioner] through the work he conducted during his doctoral study." [redacted] then described the petitioner's three-sensor vehicle tracking system, and stated:

> As an associate editor of a journal that receives a lot of multi-disciplinary research work from around the world, I understand the difficulty in finding scientists with

> expertise in multiple domains. Thus, to maintain the high standard of the journal we search for experts in their fields that possess multi-disciplinary domain knowledge. I recognized this rare capability in [the petitioner] and invited him to be a part of the review committee of the Journal of Information Fusion.

The majority of the witnesses, including those quoted above, indicated that the petitioner had developed computer models and algorithms to improve accuracy in locating tagged wildlife and moving vehicles and river barges. The petitioner's initial submission, however, contained no documentary evidence showing the implementation of the petitioner's work in practical, real-life situations.

USF Professor [redacted] praised the petitioner's doctoral work only in general terms, stating that "he displayed excellent mathematical and computer skills, basic ingredients that lead [*sic*] to high caliber technical achievements in the Intelligent Transportation Systems (ITS) area" and "had no hesitation in unraveling relevant advanced mathematical concepts . . . and utilizing them to accomplish all of his doctoral research objectives." [redacted] did, however, describe two of the petitioner's "outstanding professional achievements" at ORNL:

> The first of these involves the development of a barge tracking algorithm for geo-locating the position of river barges carrying . . . hazardous materials in large quantities. . . . [The petitioner] had developed an innovative approach to model the barge movement on an inland waterway, within a short time frame, using fundamental concepts of probability and statistical theory, and transportation system modeling. The second major accomplishment has been in the development of a rail screening simulation model that emulates operational functions at a freight rail border-crossing and screening processes that take place.

The petitioner's collaborators provided more information about the projects outlined above. [redacted] deputy group leader of the [redacted] for Transportation Analysis, described the petitioner's work relating to screening international rail shipments at a port of entry (POE):

> In order to make the screening process effective while [keeping] the transportation network efficient, one needs to understand the underlying operational environment at the respective POE. The analysis must include not only all the site specific components that could be unique to a particular site, but also the behavioral components established in the screening process and the transportation mode. Once the underlying system is identified at the POE, it needs to be represented as a simulation model so the authorities can execute different 'what-if' scenarios. . . . [redacted] asked us to develop a high fidelity simulation model for international freight railway crossing into the U.S. . . . [and] a generalized model that can seamlessly be used in any rail POE. This complicates the problem because each

> POE is equipped with different screening equipment with different characteristics, different resources, different weather and geographical conditions, and different operational principles.
>
> When we were given this task, [the petitioner] was working as a post-doctoral researcher with our group. He was tasked with developing a simulation model to simulate the screening functionality at a rail POE. . . . In a short time period, [the petitioner] was able to design and develop the simulation model, including tight integration into a graphical user interface. The simulation model emulates operational functions at a freight rail border-crossing and the screening processes that take place. In addition, the simulation model he developed can be easily generalized to incorporate new screening technology type [*sic*], thus showing potential to support multiple research areas. The simulation model was well praised by our sponsors. We are currently discussing the possibility of expanding the model to include the ability to emulate different screening architectures, and [the petitioner] will have a significant role in this expansion.
>
> In recognition of his expertise, we offered [the petitioner] a full-time research scientist position following his post-doctoral fellowship. He has an exceptional and unique set of skills in designing and developing Transportation–related simulation models.

[redacted] collaborated with the petitioner on a project

> to understand and to improve the situational awareness of a barge on an inland waterway carrying Certain Dangerous Cargo (CDC). . . . The objective of the study was to fill a major gap that existed in tracking and geo-locating the position of a CDC barge. During that time, tracking and geo-locating a CDC barge was entirely based on the reports provided by the tow captain to [the] U.S. Coast Guard [at irregular intervals]. . . . This generates concerns over the location of the CDC barge and the uncertainty involved in knowing its position, especially passing through a highly populated area. . . .
>
> [I]t is paramount to know their current location at all times. However, due to various limitations . . . in the tracking technologies merely deploying tracking devices on-board would not solve the problem. To supplement the tracking devices, there should also be an algorithmic development that uses reliable mathematical and statistical modeling techniques to track and predict the location of a CDC barge. . . . [W]e started to develop a model in the project. This was a non-trivial task, since for reliable representation of the actual system the intricate relationships and dependencies of multiple complex systems involved in the process had to be accurately captured.

> This complex task was given to [the petitioner], who at that time was working as [a] research scientist at ORNL. . . . [The petitioner] came up with a novel approach to model the barge movement on an inland waterway within [an unexpectedly] short time frame . . . using fundamental concepts of probability and statistical theory, and transportation system modeling. In addition, it captures the local variation of the river characteristics, delays due to locks and dams, and tow characteristics to estimate the traveling speed of the barge providing an accurate estimate. Due to these two factors, the algorithm performs very well even when the measurement interval is high. . . .
>
> A research paper discussing this novel idea . . . is under review [at] the [redacted] Also, we have made multiple presentations on this work to the [redacted] In addition, a private company, [redacted] [which] tracks different types of vessels, has shown interest in utilizing the algorithm that [the petitioner] developed, to be used with their system. This is a very good indication of how [the petitioner's] work has impacted not only this [regional] project but also the entire United States vessel tracking industry.

The petitioner's initial submission included no documentary evidence to show how widely, if at all, his models are in use in screening international rail shipments and tracking inland barges carrying dangerous cargo.

The director issued a request for evidence on September 8, 2011, instructing the petitioner to submit evidence to establish "a past record of specific prior achievement with some degree of influence on the field as a whole." In response, counsel contended that the director demanded "a standard of evidence that is much higher than that required for the National Interest Waiver" by *NYSDOT*:

> The Service incorrectly requires in the RFE that the petitioner show "the beneficiary's ability to serve the national interest to a substantially greater extent *than the majority of others in the field.*" This is a much higher standard than that set out in *In re NYDOT*. . . . The correct application would be to compare the beneficiary to minimally qualified U.S. workers.

To support the above claim, counsel quotes a passage from *NYSDOT*: "the petitioner . . . must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications." *Id.* at 218. The quoted passage, however, does not indicate that every alien with more than the minimum qualifications will serve the national interest to a substantially greater extent than a minimally qualified United States worker.

The *NYSDOT* precedent decision neither states nor implies that, to qualify for the waiver, an alien must simply show greater abilities than "minimally qualified U.S. workers." Rather, it states: "The alien . . . must have established, in some capacity, the ability to serve the national interest to a

substantially greater extent than the majority of his or her colleagues." *Id.* at 219 n.6. *NYSDOT* further acknowledges that, by statute, even exceptional ability does not automatically warrant a waiver. *Id.* at 218-219. The job offer/labor certification requirement does not apply only to minimally qualified alien workers.

In terms of documentary evidence, the petitioner submitted a copy of a "Contractor's Request to Assert Copyright," identifying the petitioner as the author of [redacted] This document confirms the existence of the algorithm, but proves little else.

The petitioner submitted copies of his published articles, as well as printouts from Google Scholar (http://scholar.google.com), identifying six of the petitioner's articles and showing a total of 14 citations – four cited articles, with eight, three, two and one citation(s) respectively. The petitioner submitted no comparative evidence to show that this citation rate, averaging 2.33 citations per article, demonstrates significant influence in the field. The petitioner did not identify the citing articles, although the petitioner's own articles include three self-citations. Self-citation is a common and accepted practice, but it cannot show wider impact or influence of one's work.

The director denied the petition on [redacted] The director acknowledged the intrinsic merit and national scope of the petitioner's research work, and quoted from witness letters describing the petitioner's "four significant research projects." The director then stated: "none of the authors have indicated that the petitioner's methodologies have been adopted or implemented by the [redacted] any other federal or state agencies, or any other entities," and that "the petitioner provided no evidence demonstrating that other scientists have made use of his research." The director also found that the petitioner's "citation history is not evidence of the diffusion of the petitioner's ideas throughout his field of endeavor."

On appeal, counsel states: "the Director has made mistakes of fact, resulting in the failure to take into account all the evidence submitted, as well as the mistake of law of not giving proper weight to all evidence submitted as required by the standards" in *NYSDOT*.

One of the claimed "mistakes of fact" is the director's statement that the petitioner submitted "eight letters" in support of the petition. Counsel stated that the petitioner "provided nine letters from experts. . . . Therefore, the Director did not take into account one of the support letters." Review of the record suggests that the ninth letter is from [redacted] senior managing editor of the journal [redacted]

Unlike other witness letters that described the petitioner's specific research accomplishments, [redacted] letter focused on the process by which the publisher of [redacted] selects peer reviewers. Because [redacted] said nothing about the petitioner's work in the field, it appears that the director did not count her letter as a witness letter, treating it instead as background information relating to the petitioner's peer review work. [redacted] stated:

> We only select highly qualified researchers to offer their peer-review opinions. The criteria for our selection includes [*sic*] a) has a doctoral degree or is in the senior stage of doctoral program; b) has a national and/or international reputation in the field; c) has significant contributions in the field evidenced by peer-reviewed journal and/or conference publications.
>
> [The petitioner] meets these requirements and has been invited to serve as a reviewer for our journal.

Criteria b) and c) are somewhat vague and subjective. In the absence of evidence to clarify these points, the petitioner's status as a reviewer for [redacted] is not presumptive evidence of a "national and/or international reputation" or "significant contributions in the field."

In the denial notice, the director stated:

> All but one of these letters were written by individuals who supervise the petitioner's current research, supervised the petitioner's graduate research, or worked with the petitioner during his graduate studies. The single independent reference provides no new information but simply reiterates the nature of the petitioner's [graduate] research projects.

Counsel, on appeal, disputes the above assertions as "not correct." First, counsel rhetorically asks: "Of course [the petitioner] provided letters from his supervisors and collaborators; who else would be better able to discuss the details of [the petitioner's] work and how it has been used in the field?" The director did not dispute that such individuals are in the best position to specify the nature of the petitioner's contributions to particular projects. In terms of how the petitioner's work "has been used in the field," however, a broader range of witnesses can help to support a claim that the petitioner's work goes beyond the institutions where that work took place.

Counsel states: "three of the nine reference letters are from researchers who have no working relationship with [the petitioner], namely [redacted]
The record does not identify [redacted] as a "researcher" at all. As noted above, she said little about the petitioner except to say that he has performed peer review for [redacted] has not collaborated with the petitioner, but has worked with him on a journal editorial board. This leaves [redacted] as the only witness who offered substantive commentary on the petitioner's work but who has not had interactions with the petitioner.

Counsel asserts: "A fourth letter is from [redacted] who was not [the petitioner's] supervisor, but rather collaborated with ORNL as part of the [redacted] collaborated with the petitioner at ORNL, rather than during the petitioner's graduate studies, but counsel fails to explain how this should have affected the outcome of the decision. The general point, that most of the petitioner's witnesses were also either his supervisors or his collaborators, still stands.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The BIA also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have received consideration above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

In this instance, witnesses have described the petitioner's projects, and the director has not questioned the credibility of those descriptions. The issue that the director raised concerns the extent to which the petitioner's work is in actual use in the transportation industry.

With respect to the practical application of the petitioner's work, counsel notes that the [redacted] funds ORNL, and that "[t]herefore all work that [the petitioner] has done in furtherance of ORNL projects . . . has been adopted by a federal agency, namely the [redacted] The record still does not show to what extent, if at all, the [redacted] or any other agency has actually begun using the petitioner's work. There is no support for counsel's blanket assertion that the [redacted] must be using the petitioner's work because he did that work under [redacted] auspices.

Concerning work funded by [redacted] counsel stated: "this work is a matter of national security. This information is not necessarily shared with individual researchers; even if it were, they may not necessarily be at liberty to share this information."

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. § 1361. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication. Each benefit request must be properly completed and filed with all initial evidence required by applicable regulations and other USCIS instructions. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Counsel cannot avoid the burden of proof simply by implying that the petitioner's work may already be in use, but in secret ways that even the witnesses may not know. The petitioner's witnesses were evidently at liberty to disclose the petitioner's involvement in research into scanning rail cars for dangerous cargo. It strains credulity to suggest that the petitioner is permitted to disclose the existence of this program but not to say whether or not it is actually in use.

Counsel claims: "It is unreasonable for the Director, who is an employee of the [redacted] to expect further elaboration about past and ongoing research conducted on behalf of the [redacted] is a [redacted] component, but this fact does not relieve the petitioner of all responsibility to submit any evidence relating to work performed on behalf of [redacted] is a very large entity, comprising 22 separate agencies including the [redacted] Counsel does not explain why it is reasonable to presume that the Service Center director, a regional official of one [redacted] component agency, has detailed knowledge of activities undertaken by other [redacted] component agencies, let alone third parties under contract to those agencies.

Counsel contends that the director did not give sufficient weight to the petitioner's published work and "presentations to government agencies." The director did not dispute that the petitioner had made his work available in this way. Repeatedly on appeal, counsel makes the untenable presumption that, if a government agency was aware of the petitioner's work, then it must have acted upon it.

Counsel states: "most importantly [the petitioner] has provided evidence that the [redacted] one of the most prestigious and influential national laboratories in the country, felt that he was the ideal candidate for this position." There exists no blanket waiver for employees of national laboratories; the statute does not exempt national laboratories from the job offer requirement. The director and the AAO have taken ORNL's prestige into consideration, but employment at a national laboratory is not presumptive evidence of eligibility for the waiver.

Counsel states: "as has been reiterated by the AAO numerous times, while citations are a valuable gauge of a researcher[']s impact, they are not the only available tool." This statement is true as far as it goes, but it does not make the petitioner the arbiter of the sufficiency of his own evidence. In the absence of heavy citation of his published work, the petitioner must credibly establish his influence by some other means. The petitioner has not done so. Rather than offer alternative evidence of the impact of his work, counsel, on appeal, simply offers excuses for the absence of that evidence.

The AAO agrees with the director's finding that the petitioner has established the dissemination of his research findings, but has not shown that public or private enterprises have actually used those findings to improve barge tracking, rail cargo security, or other activities relating to the petitioner's work. The petitioner has not explained how these suggested improvements significantly serve the

national interest if they are not actually put to use. Based on the evidence provided, the AAO affirms the director's conclusion that the record lacks evidence of the petitioner's impact on his field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.